

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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JOHNRYAN S.,

Plaintiff,  
v.

Civil Action No.  
5:20-CV-1458 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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APPEARANCES:

FOR PLAINTIFF

OLINKSY LAW GROUP  
250 South Clinton Street, Suite 210  
Syracuse, NY 13202

OF COUNSEL:

MELISSA A. DELGUERCIO, ESQ.  
HOWARD D. OLINSKY, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.  
625 JFK Building  
15 New Sudbury St  
Boston, MA 02203

CHRISTOPHER L. POTTER, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff

seeks judicial review of an adverse administrative determination by the Commissioner of Social Security (“Commissioner”), pursuant to 42 U.S.C. §§ 405(g) and 1383(c), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral argument was conducted in connection with those motions on July 6, 2022, during a telephone conference held on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner’s determination did not result from the application of proper legal principles and is not supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court’s oral bench decision, a transcript of which is attached and incorporated herein by reference, it is hereby

ORDERED, as follows:

- 1) Plaintiff’s motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner’s determination that plaintiff was not

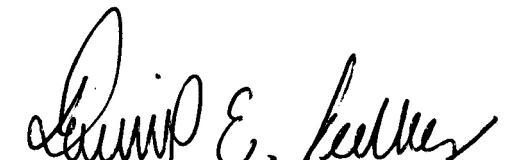
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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is VACATED.

3) The matter is hereby REMANDED to the Commissioner, without a directed finding of disability, for further proceedings consistent with this determination.

4) The clerk is respectfully directed to enter judgment, based upon this determination, remanding the matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) and closing this case.



David E. Peebles  
David E. Peebles  
U.S. Magistrate Judge

Dated: July 11, 2022  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JOHNRYAN S.,

Plaintiff,

vs.

20-CV-1458

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

-----x

**TRANSCRIPT OF DECISION  
BEFORE THE HONORABLE DAVID E. PEEBLES**  
held on July 6, 2022  
100 S. Clinton Street, Syracuse, New York

APPEARANCES (by telephone)

For Plaintiff:

OLINSKY LAW GROUP  
250 South Clinton Street  
Syracuse, New York 13202  
BY: MELISSA A. DELGUERCIO, ESQ.

For Defendant:

SOCIAL SECURITY ADMINISTRATION  
15 New Sudbury Street  
Boston, MA 02203  
BY: CHRISTOPHER POTTER, ESQ.

*Eileen McDonough, RPR, CRR  
Official United States Court Reporter  
P.O. Box 7367  
Syracuse, New York 13261  
(315) 234-8546*

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1                   THE COURT: Let me begin by thanking counsel for  
2 excellent and spirited presentations. I've enjoyed working  
3 with you on this matter.

4                   Plaintiff has commenced this proceeding pursuant to  
5 42, United States Code, Sections 405(g) and 1383(c)(3) to  
6 challenge an adverse determination by the Commissioner of  
7 Social Security finding that he was not entitled to the Title  
8 XVI benefits for which he applied. The background is as  
9 follows.

10                  Plaintiff was born in January of 1984. He stands  
11 5-foot 7 or 5-foot 8 inches in height and has weighed between  
12 158 and 168 pounds. He lives with his mother and son who was  
13 11 years of age in December of 2019. They live in Syracuse,  
14 New York, in a two-family home.

15                  Plaintiff has a sixth grade education and while in  
16 school attended regular classes. He is right-handed.  
17 Plaintiff has no driver's license and he does not take public  
18 transportation. For transportation to appointments he uses  
19 Medicaid transports.

20                  Plaintiff has worked in the past but stopped in  
21 February of 2018 after being stabbed in the head by his  
22 mother's boyfriend during a domestic incident resulting in a  
23 traumatic brain injury and a plate being placed in his head.  
24 While he was employed he occupied some short-term casual  
25 positions as a cashier in such places as Dunkin' Donuts,

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1 Price Chopper, and in a gas station.

2 Plaintiff also was in prison on and off over a  
3 period of eight years, having been convicted for such crimes  
4 as burglary, knife assault, and possession of stolen credit  
5 cards. Included in that is seven months spent in solitary  
6 confinement.

7 Although plaintiff's physical condition is not at  
8 issue in this case, he does suffer from some issues,  
9 including overactive bladder, history of Grave's disease,  
10 GERD, and chronic leg pain.

11 Mentally, plaintiff suffers from posttraumatic  
12 stress disorder, or PTSD, anxiety disorder with agoraphobia,  
13 depression, a mood disorder, a panic disorder, and a history  
14 of opioid abuse in remission. He went through outpatient  
15 substance abuse therapy in 2018. He also reports that he was  
16 addicted, at least he told Dr. Shapiro, from 2006 to 2010.  
17 Plaintiff has panic attacks two times per day on average and  
18 suffers from paranoia. He notes that he was molested by a  
19 neighbor at age seven or eight.

20 Plaintiff has treated with various therapists and  
21 healthcare providers, including Dr. Daniel Ratnarajah,  
22 R-A-T-N-A-R-A-J-A-H, his primary care physician. Also  
23 Dr. Nevena, N-E-V-E-N-A, Radonjic, R-A-D-O-N-J-I-C, a  
24 psychiatrist who has treated the plaintiff since October of  
25 2018. He also treated with Circare, C-I-R-C-A-R-E, from

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1 January to May of 2018. He also sees therapist Bruce Green.

2 Plaintiff is a former smoker having smoked  
3 approximately one pack per day, but testified that he quit.

4 In terms of activities of daily living, plaintiff  
5 is able to bathe, dress, groom, cook, clean, do laundry. He  
6 did play internet poker, although at page 64 during the  
7 hearing he testified that he does not any longer. He is able  
8 to socialize with a cousin, watch TV. He once drove to Maine  
9 to pick up his son who was reportedly suicidal. He does not  
10 shop because of his anxiety.

11 Procedurally, plaintiff applied for Title XVI  
12 benefits on April 2, 2018, alleging an onset date of  
13 September 1, 2008. He claims disability, at page 203, based  
14 upon his traumatic brain injury, GERD, fibromyalgia, chronic  
15 leg pain, Grave's disease, overactive bladder, PTSD, anxiety,  
16 persistent depression, and agoraphobia.

17 A hearing was conducted on December 16, 2019 by  
18 Administrative Law Judge Michael J. Kopicki to address  
19 plaintiff's application. On December 27, 2019, that  
20 Administrative Law Judge, or ALJ, issued an unfavorable  
21 decision which became the final determination of the Agency  
22 on September 24, 2020, when the Social Security  
23 Administration Appeals Council denied plaintiff's application  
24 for review. This action was commenced on November 27, 2020,  
25 and is timely.

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1           In his decision ALJ Kopicki applied the familiar  
2 five-step test for determining disability.

3           At step one, he concluded that plaintiff had not  
4 engaged in substantial gainful activity since the date of his  
5 application, April 2, 2018, although he did have some minor  
6 unreported earnings during the relevant period.

7           At step two, he concluded that plaintiff does  
8 suffer from severe impairments which impose more than minimal  
9 limitations on his ability to perform basic work functions,  
10 including depressive disorder, generalized anxiety disorder,  
11 and PTSD.

12           At step three, ALJ Kopicki concluded that  
13 plaintiff's conditions do not meet or medically equal any of  
14 the listed presumptively disabling conditions set forth in  
15 the Commissioner's regulations, specifically considering  
16 listings 12.04, 12.06 and 12.15.

17           At step four, the Administrative Law Judge  
18 concluded plaintiff had not engaged in anything that would be  
19 considered past relevant work.

20           Proceeding to step five, he determined based upon  
21 the testimony of a vocational expert who was presented with a  
22 hypothetical that tracked the RFC finding that plaintiff was  
23 not disabled and was capable of performing available work in  
24 the national economy, including as a marker, router, and  
25 routing clerk.

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1                   As you know, the Court's function in this case is  
2 twofold; I must determine whether substantial evidence  
3 supports the resulting determination and whether correct  
4 legal principles were applied. I will acknowledge that it is  
5 an extremely deferential standard. Substantial evidence  
6 being defined as such relevant evidence as a reasonable  
7 person would find sufficient to support a conclusion.

8                   As the Second Circuit Court of Appeals noted in  
9 *Brault versus Social Security Administration Commissioner*,  
10 683 F.3d 443, from 2012, the standard to be applied is  
11 extremely stringent and deferential. Under that standard the  
12 Court noted in *Brault* once an Administrative Law Judge finds  
13 a fact, that fact can be rejected only if a reasonable  
14 factfinder would have to conclude otherwise.

15                   The plaintiff in this case raises essentially a  
16 single contention that the medical evidence and opinion  
17 evidence in the record was improperly evaluated, focusing on  
18 opinions given by Dr. Jeanne Shapiro, and the treating  
19 physician Dr. Radonjic.

20                   The case is subject, as counsel appropriately  
21 noted, to new regulations which took effect for applications  
22 filed after March of 2017. Under those regulations the ALJ  
23 no longer defers or gives any specific evidentiary weight,  
24 including controlling weight, to any medical opinion. 20 CFR  
25 Section 416.920c(a). Instead the ALJ must consider each

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1 medical opinion using relevant factors set out in the  
2 regulation and must specifically address the factors of  
3 supportability and consistency of those medical opinions, and  
4 must articulate how persuasive the medical opinion was found  
5 to be after considering those two factors.

6 The ALJ is also permitted, but not required, to  
7 consider other relevant factors, including notably the  
8 source's relationship with the claimant, including the length  
9 of the treatment relationship, frequency of examinations,  
10 purpose of the treating relationship, extent of the treating  
11 relationship, and whether it was merely an examining  
12 relationship.

13 And, of course, the law remains under such cases as  
14 *Veino v. Barnhart*, 312 F.3d 578, from the Second Circuit,  
15 2002, that it is in the first instance for the Administrative  
16 Law Judge to weigh conflicting opinions. In this case the  
17 opinion of Dr. Jeanne Shapiro is at issue. Dr. Shapiro is an  
18 examining consultant who conducted an employability  
19 assessment for the Onondaga County Department of Social  
20 Services on January 9, 2018, and then later conducted a  
21 psychiatric examination of the plaintiff on May 25, 2018. In  
22 the employability assessment, which appears at pages 310 to  
23 315 of the Administrative Transcript, Dr. Shapiro found that  
24 plaintiff, on page 312, had abnormal mood and abnormal  
25 affect.

1                   Later on in the form, at page 314, the expert  
2 concluded that plaintiff is extremely limited, which is  
3 defined as equal to or more than 75 percent of the time, in  
4 the areas of regularly attending to a routine and maintaining  
5 a schedule, and ability to use public transportation. The  
6 form asks for conclusions regarding employability.

7 Interestingly, when speaking of that form Administrative Law  
8 Judge Kopicki characterized it as stating that Dr. Shapiro  
9 opined the claimant could work with simple instructions and  
10 had moderate limitation working with complex tasks, et  
11 cetera. And that's actually not what the form says. The  
12 conclusion on employability is on page 315, "Individual  
13 appears permanently disabled, condition is not expected to  
14 improve, and is unable to participate in any activities."

15 When asked is this individual unable to work for more than  
16 six months due to his or her mental condition, the answer is  
17 yes.

18                   The Administrative Law Judge addressed this opinion  
19 at pages 17 and 19 of his decision and found it to be  
20 generally unconvincing. The reasons given on page 19 were  
21 inconsistency with the later opinion, which I'll address in a  
22 moment, even though they're four months apart, "The opinions  
23 are also inconsistent with the subsequent treatment record,  
24 which notes the claimant felt much better when taking his  
25 psychiatric medication," and interestingly says, "and which

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1 is devoid of significant behavioral disturbance around  
2 others," which is inaccurate because the plaintiff was  
3 engaged in some sort of altercation involving the use of  
4 knives in September of 2018. It also states that the  
5 opinions are vague without specific vocational limitations,  
6 which I might agree with regard to the first opinion but, as  
7 will be seen, I cannot agree with with regard to the later  
8 opinion.

9                   By the way, I do reject any contention, and I'm not  
10 sure the contention is being pressed, that once a medical  
11 opinion is addressed and the factors of supportability and  
12 consistency are articulated, the Court must uphold the  
13 Administrative Law Judge's decision even if the  
14 supportability and consistency finding is flawed. The  
15 substantial evidence test still controls.

16                   The next opinion from Dr. Shapiro is from May 25,  
17 2018. It appears at 440 to 444 of the Administrative  
18 Transcript. It's based on an examination which was conducted  
19 of the plaintiff. And it was noted in the objective portion  
20 of the opinion that when it comes to mental status, plaintiff  
21 was somewhat withdrawn, his affect was constricted. During  
22 the examination the complainant reported feeling anxious and  
23 depressed, the claimant was tense and fearful and was sad and  
24 withdrawn. The medical source statement constituting  
25 Dr. Shapiro's opinion finds that the plaintiff appears to

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1 have moderate to marked limitations interacting adequately  
2 with supervisors, coworkers and the public, and also in  
3 regulating emotions, controlling behavior, and maintaining  
4 well-being. As I indicated, Dr. Shapiro's opinions were  
5 found generally unpersuasive and I articulated the reasons.

6 The opinions of Dr. Radonjic, a treating source,  
7 are even more restricted in terms of what she believes the  
8 plaintiff is capable of doing notwithstanding his mental  
9 impairments. Dr. Radonjic filled out an employability  
10 assessment form on April 9, 2019. It appears at 1751 and  
11 1752 of the record. It's actually signed by someone else  
12 whose signature is illegible on March 18, 2019, but  
13 Dr. Radonjic also appears to have ascribed to the opinion.

14 The opinion finds that plaintiff is severely  
15 limited in many areas: Ability to perform low stress, simple  
16 and complex tasks independently; ability to interact with  
17 others and maintain socially appropriate behavior without  
18 exhibiting behavioral -- it's difficult to read -- extremes I  
19 think is the word; ability to maintain attention and  
20 concentration for routine tasks; and demonstrates ability to  
21 function in a work setting. It also finds that when it comes  
22 to employability, the box is checked, "no activity except  
23 treatment or rehabilitation, not permanently disabled," but  
24 the expected duration is more than 12 months.

25 Dr. Radonjic issued a more substantial opinion on

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1 November 26, 2019. It appears at pages 2252 through 2257 of  
2 the Administrative Transcript. It asks for certain verbal  
3 explanations and then it seeks opinions in several domain  
4 areas. In the domain of understanding, remembering, or  
5 applying information, Dr. Radonjic finds plaintiff extremely  
6 limited, meaning more than 20 percent of the time, in three  
7 of eleven specified subareas. In interacting with others,  
8 the treating doctor finds extreme limitations in four of  
9 eight subareas. In concentration, persistence, or  
10 maintaining pace, again extreme inability in four of eight,  
11 and three of the four remaining are deemed marked or serious  
12 limitations. In adapting or managing oneself, the plaintiff  
13 is limited, according to Dr. Radonjic, in five of ten  
14 specified areas.

15 The Administrative Law Judge considered  
16 Dr. Radonjic's opinions and found them unpersuasive for the  
17 following reasons: They're internally inconsistent as they  
18 note both no limitation and also extreme limitation working  
19 with simple tasks and instructions. Two, not supported by  
20 her own notation that the claimant has average intelligence,  
21 which I question how intelligence relates to the ability to  
22 interact with others. Three, they're inconsistent with  
23 observations of other treatment providers that the claimant  
24 was cooperative during evaluations, et cetera. Four, the  
25 record does not contain any evidence of psychiatric

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1 hospitalizations during the pendency of his claim. I note  
2 that there is evidence in the record of prior  
3 hospitalizations but they predate any onset of disability in  
4 this case. Five, he is able to perform his activities of  
5 daily living, help his mother, and care for his son. And  
6 six, they're not supported by the records of therapy through  
7 2019, which demonstrate improvement with treatment. So those  
8 are the reasons cited.

9 There is also an opinion, as we've discussed, from  
10 Dr. M. Ferrin, dated July 12, 2018, a State Agency  
11 non-examining consultant. It appears at 81 through 95 of the  
12 Administrative Record.

13 Dr. Ferrin opines that plaintiff is capable of  
14 essentially performing simple work. He finds the claimant is  
15 able to understand and remember simple and detailed  
16 instructions and procedures, has some difficulties in the  
17 area of sustained concentration and persistence, but is able  
18 to sustain an adequate concentration to complete ordinary  
19 tasks. He notes that while the claimant may have some  
20 difficulty with socialization in daily life, he is capable of  
21 interacting in a socially appropriate manner. And while  
22 there is some difficulty with adaptation, he is able to cope  
23 with basic changes.

24 I do note that even under the new regulations all  
25 medical opinions are not equal. A medical source, who has

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1 had the opportunity to examine a claimant, may have a better  
2 understanding than someone who reviews a cold file; 20 CFR  
3 Section 416.920c(c) (3) (v) .

4 When it comes to Dr. Shapiro, the ALJ found  
5 differences in the two opinions but they're very different  
6 formats. For example, the first on the employability  
7 assessment did not ask anything about interacting with  
8 others, maintaining of self, regulating emotions. The  
9 evidence is equivocal; yes, there are some treatment notes  
10 that indicate improvement but some clearly do not.

11 The Administrative Law Judge found that there were  
12 no vocational, specific vocational limitations and the  
13 opinion was vague. I don't agree. The subsequent treatment  
14 notes reveal some worsening, including, as I said, the knife  
15 fight in September 2018. When it comes to activities of  
16 daily living, I do not believe that they support a finding  
17 that plaintiff is capable of performing work on a five-day,  
18 eight-hour-per-day consistent basis.

19 Having a panic disorder, anxiety, depression, PTSD  
20 is not necessarily inconsistent with the ability to do simple  
21 cooking, cleaning, showering. The evidence is very clear  
22 plaintiff does not like to go out, he does not use public  
23 transportation, he does not shop. In a physical ability case  
24 activities of daily living might shed a great deal more light  
25 on what objectively a plaintiff is able to do, but in a

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1 mental case such as this, I don't find that a logical  
2 connection has been demonstrated between plaintiff's  
3 activities of daily living and his ability to work on a  
4 sustained basis in competitive employment.

5 I reject the suggestion, by the way, of the  
6 plaintiff that there was a duty to recontact. I don't think  
7 that there was in this case. There was certainly permission  
8 under the regulations for the Administrative Law Judge to  
9 recontact, but it is not required; *Marjorie H., on behalf of*  
10 *Nelson L. versus Commissioner*, 2019 WL 4142592, Northern  
11 District of New York, August 30, 2019.

12 When it comes to Dr. Radonjic, as I said before,  
13 average intelligence does not to me speak to the ability to  
14 interact with others or to maintain oneself and regulate  
15 emotions. The activities of daily living as supporting  
16 plaintiff's ability to perform competitive work fails for the  
17 reason that I just articulated; the treatment records are  
18 equivocal, and to some degree the Administrative Law Judge  
19 did cherrypick and focus on a very few that showed  
20 improvement.

21 I note that the fact that plaintiff may have been  
22 cooperative with his healthcare providers during exams, I'm  
23 not sure that that necessarily translates into the ability to  
24 interact with supervisors, coworkers, and the public. I  
25 agree with District Judge James Robart, in *Tina R. versus*

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1       *Commissioner of Social Security*, 2019 WL 1417301, from the  
2 Western District of Washington, that the fact that a claimant  
3 manages to be cooperative with her healthcare providers does  
4 not contradict opinions that the claimant is limited in the  
5 ability to interact with others, including co-workers,  
6 supervisors and the general public. Healthcare providers are  
7 professionals trained to deal with mentally and physically  
8 ill or disabled patients, and a medical treatment  
9 relationship is not like the relationship a worker has with  
10 coworkers, supervisors or the general public. Interactions  
11 with treatment providers are likely to be less demanding or  
12 more supportive than typical work settings, and thus, do not  
13 demonstrate an ability to work with coworkers, supervisors or  
14 the general public in a work setting.

15           So while the ALJ attempted to explain reasoning for  
16 finding consistency and supportability of the opinions of  
17 Dr. Shapiro and Dr. Radonjic as lacking, I find that the  
18 explanation is flawed. There are a number of misstatements  
19 made by the Administrative Law Judge. And I find that the  
20 error is harmful because the opinions do not support the  
21 residual functional capacity and could show that even if  
22 plaintiff meets or medically equals any or some of the listed  
23 Section 12.00B criteria relative to Section 12.00 of the  
24 listings, the competing opinions in this case were not  
25 properly weighed.

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1 I agree with the plaintiff's attorney during oral  
2 argument who conceded that this probably does not warrant a  
3 directed finding. I don't find that there is persuasive  
4 proof of disability in the record and that the further  
5 development of the record would not serve any useful purpose.  
6 I think this needs a second look at the opinions of  
7 Dr. Shapiro and the opinions of Dr. Radonjic, as well as  
8 Dr. Ferrin, and if necessary but not -- if deemed  
9 appropriate, although I don't find that it is absolutely  
10 necessary, to either recontact one or both of those sources  
11 or order another consultative mental examination, but I will  
12 leave that to the wisdom of the Agency.

13 So, I will grant judgment on the pleadings to the  
14 plaintiff, vacate the Commissioner's determination and remand  
15 the matter for further proceedings consistent with this  
16 opinion. Thank you both. I hope you have a good afternoon.

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## C E R T I F I C A T I O N

I, EILEEN MCDONOUGH, RPR, CRR, Federal Official  
Realtime Court Reporter, in and for the United States  
District Court for the Northern District of New York,  
do hereby certify that pursuant to Section 753, Title 28,  
United States Code, that the foregoing is a true and correct  
transcript of the stenographically reported proceedings held  
in the above-entitled matter and that the transcript page  
format is in conformance with the regulations of the  
Judicial Conference of the United States.

Eileen McDonough

EILEEN MCDONOUGH, RPR, CRR  
Federal Official Court Reporter